In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 387

CONRAD BANTEL, HELENE LIEB, WILHELM NAGEL AND BERTA SPENGLER, PETITIONERS

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, AND IVY BAKER PRIEST, TREASURER OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Court of Appeals for the District of Columbia Circuit (R. 29) is reported at 234 F. 2d 692 and is set out in an appendix to the petition.

JURISDICTION

The judgment of the Court of Appeals was entered on June 7, 1956 (R. 32). The petition was filed on

September 5, 1956. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED

Treasury Department General License No. 94 freed blocked property from the prohibitions of Executive Order No. 8389, as amended, the foreign funds blocking order. A proviso in the General License expressly excluded, however, so far as here relevant, property in which on December 31, 1946, persons in Germany had an interest. Petitioners were admittedly persons in Germany at all material times. The questions presented are:

(1) Whether the trust property in suit is property in which petitioners had an interest on December 31, 1946, and is therefore within the proviso of General License No. 94.

(2) If not, whether General License No. 94 had the effect of foreclosing the Attorney General, as successor to the Alien Property Custodian, from vesting such property during the war and of permitting petitioners to sue under Section 9 (a) of the Trading With the Enemy Act, notwithstanding that they are "enemies" within the Act.

EXECUTIVE ORDERS AND REGULATIONS INVOLVED

Pertinent portions of General License No. 94, as amended on March 4, 1947, General Ruling No. 4, as amended, Executive Order No. 8389, as amended, and Executive Order No. 9193, as amended, are reprinted in the Appendix, *infra,* pp. 8–13.

STATEMENT

Petitioners' complaint seeks the return of property vested under the Trading With the Enemy Act (40 Stat. 411, as amended, 50 U. S. C. App. § 1, *et seq.*). The facts alleged are as follows: In April 1934, an American citizen executed a deed of trust, naming a Colorado bank as trustee (R. 5, par. 15; R. 8). The deed provided for the payment of income for life to the settlor and reserved to her the power to modify and revoke the trust. The deed further provided for distribution of the corpus upon the death of the settlor, one-third to American residents, one-third to Katharina Nagel or to her representatives if she predeceased the settlor, and one-third to Conrad Bantel or to his representatives if he predeceased the settlor. Petitioners are Conrad Bantel and the representatives of Katharina Nagel, the latter having predeceased the settlor. All are and always have been citizens and residents of Germany (R. 2, 27).

In 1943, by an "Alteration of Trust Agreement," the settlor provided that the trust should continue and that payment of the corpus to the German beneficiaries should be postponed until such time as the transfer of property to German nationals is permitted but in any event within twenty-one years after the death of the settlor. The petitioners' aggregate share, however, continued to be two-thirds of the corpus (R. 12–14).

In 1946, by an "Amendment to Trust Deed," the settlor reduced the petitioners' share to one-half and again postponed distribution if, at the death of the

settlor, relations between Germany and the United States precluded payment of the funds which should ultimately be distributable to the German nationals (R. 15–18).

In April 1947, by an "Amendment to Trust Deed," the settlor restored the petitioners' interest to two-thirds and eliminated the clause postponing distribution (R. 18–20). This was the settlor's last revision of the trust. At the time of this final revision, the settlor was aware of an amendment by the Secretary of the Treasury of General License No. 94 (Appendix, pp. 12–13) which, so far as here relevant, removed the blocking controls imposed by Executive Order No. 8389, as amended (Appendix, pp. 8–10), except as to property in which, on December 31, 1946, persons in Germany had an interest (R. 20). The settlor was also aware of a public statement, issued jointly by the Secretaries of the Treasury, State and War and the Attorney General, in which the Attorney General declared that "in general" the Office of Alien Property would not vest German interests acquired after December 31, 1946 (R. 25).

The settlor died in 1950 and, in June 1951, the Attorney General through Vesting Order No. 17921 (16 Fed. Reg. 5462) vested that portion of the trust property held by the trustee bank for the petitioners (R. 2–4). On March 18, 1955, petitioners filed their complaint for recovery of the vested property (R. 1). Respondents then moved to dismiss for lack of jurisdiction on the ground that petitioners as "enemies" within Section 2 of the Trading With the Enemy Act

are ineligible to sue under Section 9 (a) of that Act (R. 26). The District Court granted the motion and dismissed the complaint without opinion (R. 28). The Court of Appeals affirmed, holding (1) that petitioners "had an interest in the trust property at all times since April 6, 1934 [the date the trust was created]: certainly they had an interest on December 31, 1946" (note 1 of Opinion), so that the property was excluded by the proviso from the benefits of General License No. 94 (note 2 of Opinion), and (2) that in any event the General License did not have the effect of foreclosing the Attorney General from vesting the property of persons who are "enemies" within the Act nor of qualifying such persons to sue under Section 9 (a) for the recovery of vested property.

ARGUMENT

The first question presented is limited in scope and is of little consequence beyond this litigation. The holding below that petitioners had an interest in the property in suit at all times since the creation of the trust in 1934, and that they did not first acquire that interest until after December 31, 1946, represents an application of well-settled trust law. See Scott, *Trusts* (2d Ed., 1956), Vol. I, § 57.1, and Vol. III, § 331. That holding, if correct, makes unnecessary resolution of the second question presented, *viz.*, the effect of General License No. 94, since property in which persons in Germany had an interest on December 31, 1946, was specifically excepted from the operation of the General License.

In any event, General License No. 94 did not give petitioners the status of "non-enemies," even assuming they first acquired their interest in the property after December 31, 1946, and so were entitled to its benefits. It merely entitled them with respect to property they acquired after December 31, 1946, to be treated as if they were not nationals of a foreign country designated in Executive Order No. 8389 (the "blocking" order). They were thus freed as to such property from the prohibitions imposed by that Order. They remained, however, nationals of a designated enemy country within Executive Order No. 9193. That Executive Order delegated to the Attorney General, as successor to the Alien Property Custodian, the authority to vest the property of such nationals. Germany was a "designated enemy country" at least until Congress adopted the Joint Resolution of October 19, 1951 (65 Stat. 451), which formally terminated the war. As residents of Germany they were nationals of a "designated enemy country" and their property in May 1951, was subject to the vesting authority. See *National Savings & Trust Co.* v. *Brownell*, 95 U. S. App. D. C. 370, 222 F. 2d 395, cert. denied, 349 U. S. 955.

The holding below on this issue was plainly correct. Moreover, the issue lacks general importance. We know of only one other case in which the vesting authority was exercised with respect to property acquired after December 31, 1946. Manifestly, this is not a case calling for review by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 1956.

APPENDIX

1. Executive Order No. 8389, April 10, 1940, 5 Fed. Reg. 1400 (3 C. F. R. 1943 Cum. Supp., p. 645), as amended by Executive Order No. 8785, June 14, 1941, 6 Fed. Reg. 2897 (3 C. F. R. 1943 Cum. Supp., p. 948); 12 U. S. C. A. following Section 95a:

> SEC. 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof, or (ii) such transactions involved property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:
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> A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);
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> B. All payments by or to any banking institution within the United States;
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> C. All transactions in foreign exchange by any person within the United States;
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> D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

E. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

* * * * *

SEC. 3. The term "foreign country designated in this Order" means a foreign country included in the following schedule, and the term "effective date of this Order" means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

(a) April 8, 1940—Norway and Denmark;

(b) May 10, 1940—The Netherlands, Belgium and Luxembourg;

(c) June 17, 1940—France (including Monaco);

(d) July 10, 1940—Latvia, Estonia and Lithuania;

(e) October 9, 1940—Rumania;

(f) March 4, 1941—Bulgaria;

(g) March 13, 1941—Hungary;

(h) March 24, 1941—Yugoslavia;

(i) April 28, 1941—Greece; and

(j) June 14, 1941—Albania, Andorra, Austria, Czechoslovakia, Danzig, Finland, Germany, Italy, Liechtenstein, Poland, Portugal, San Marino, Spain, Sweden, Switzerland, and Union of Soviet Socialist Republics. * * *

* * * * *

SEC. 5. * * *

E. The term "national" shall include,

(i) Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order.

(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, such foreign country and/or one or more nationals thereof as herein defined * * *

* * * * *

2. *Executive Order No. 9193*, July 6, 1942, 7 Fed. Reg. 5205 (3 C. F. R. 1943 Cum. Supp. 1174), as amended by Executive Order No. 9567, June 8, 1945, 10 Fed. Reg. 6917 (3 C. F. R. 1945 Supp. 77); 50 U. S. C. A. App., following Section 6:

* * * * *

2. The Alien Property Custodian is authorized and empowered to take such action as he deems necessary in the national interest, including, but not limited to, the power to direct, manage, supervise, control or vest, with respect to:

(a) any business enterprise within the United States which is a national of a designated enemy country and any property of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of or owing to or which is evidence of ownership or control of any such business enterprise, and any interest of any nature whatsoever in such business enterprise held by an enemy country or national thereof;

(b) any other business enterprise within the United States which is a national of a foreign country and any property of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of or owing to or which is evidence of ownership or

control of any such business enterprise, and any interest of any nature whatsoever in such business enterprise held by a foreign country or national thereof, when it is determined by the Custodian and he has certified to the Secretary of the Treasury that it is necessary in the national interest, with respect to such business enterprise, either (i) to provide for the protection of the property, (ii) to change personnel or supervise the employment policies, (iii) to liquidate, reorganize, or sell, (iv) to direct the management in respect to operations, or (v) to vest;

(c) Any other property or interest within the United States of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, a designated enemy country or national thereof * * *

* * * * *

10. For the purpose of this Executive Order:

(a) The term "designated enemy country" shall mean any foreign country against which the United States has declared the existence of a state of war (Germany, Italy, Japan, Bulgaria, Hungary, and Rumania) and any other country with which the United States is at war in the future. The term "national" shall have the meaning prescribed in section 5 of Executive Order No. 8389, as amended: *provided, however,* that persons not within designated enemy countries (even though they may be within enemy-occupied countries or areas) shall not be deemed to be nationals of a designated enemy country unless the Alien Property Custodian determines: (i) that such person is controlled by or acting for on behalf of (including cloaks for) a designated enemy country or a person within such country; or (ii) that such person is a citizen or subject of a designated enemy country and within an enemy-occupied

country or area; or (iii) that the national interest of the United States requires that such person be treated as a national of a designated enemy country. For the purpose of this Executive Order any determination by the Alien Property Custodian that any property or interest of any foreign country or national thereof is the property or interest of a designated enemy country or national thereof shall be final and conclusive as to the power of the Alien Property Custodian to exercise any of the power or authority conferred upon me by section 5 (b) of the Trading With the Enemy Act, as amended.

3. Treasury Department General License No. 94, as amended March 4, 1947, 12 Fed. Reg. 1457, 31 C. F. R., 1947 Supp. 131.94:

General License No. 94 (Section 131.94) is hereby amended to read as follows:

CERTAIN COUNTRIES GENERALLY LICENSED

(a) *Blocked countries generally licensed subject to certain conditions.*—A general license is hereby granted licensing all blocked countries and nationals thereof (excepting the following countries and nationals thereof: Portugal, Spain, Sweden and Tangier) to be regarded as if such countries were not foreign countries designated in the Order, *provided that*

(1) any property in which on effective date hereof any of the following had an interest: (i) any blocked country (including countries licensed hereby) or person therein; or (ii) any other partnership, association, corporation, or other organization, which was a national of a blocked country (including countries licensed hereby) by reason of the interest of any such country or person therein; or

(2) any income from such property accruing on or after the effective date hereof

shall continue to be regarded as property in which a blocked country or national thereof has an interest and no payment, transfer, or withdrawal or other dealing with respect to such property shall be effected under, or be deemed to be authorized by, this paragraph.

* * * * *

(g) *Effective date.*—The effective date of this general license shall be December 7, 1945, except that it shall be October 5, 1945 as to France, November 20, 1945 as to Belgium, November 30, 1946 as to Switzerland and Liechtenstein and, December 31, 1946 as to Germany and Japan.

* * * * *

4. General Ruling No. 4, as amended May 24, 1941, 6 Fed. Reg. 2583:

Except as specifically provided herein or otherwise, all definitions appearing in Executive Order No. 8389 of April 10, 1940, as amended, and the Regulations issued thereunder, shall apply to the terms employed in all rulings, licenses, instructions, etc., and, in addition, the following definitions and rules of interpretation are prescribed:

(1) The term "Order" shall mean Executive Order No. 8389, as amended.

(2) The term "license" shall mean a license issued under the Order.

* * * * *

(4) The term "blocked country" shall mean any foreign country designated in the Order.

* * * * *

(7) Any person licensed as a "generally licensed national" shall, while so licensed, be regarded as a person within the United States who is not a national of any blocked country; * * *

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U. S. GOVERNMENT PRINTING OFFICE: 1947